

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

NEWPORT-MESA UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2015010061

ORDER GRANTING REQUEST FOR
CONTINUANCE, SETTING
CONTINUED PREHEARING
CONFERENCE AND HEARING, AND
DENYING REQUEST TO COMPEL
MEDIATION

On March 12, 2015, Student filed a request to continue the dates in this matter based upon (1) Mother's unavailability for the scheduled hearing dates and (2) the scheduling of an independent assessor's observation of Student in his current educational placement. The motion also contained a request to compel mediation. On March 16, 2015, District filed an opposition. As discussed below, the continuance is granted. The request to compel mediation is denied.

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

By order dated March 9, 2015, OAH ordered the independent assessor's observation to occur on March 12, 2015, and therefore no good cause exists for a continuance on that ground. However, Student has established good cause for a continuance based upon Mother's employment situation. Mother filed a declaration under penalty of perjury that she

is the sole financial support for her family, and is newly-employed since March 9, 2015, at a job with a 90-day probation period that requires her to work on Thursdays and to attend a mandatory training on March 24-26. The hearing is currently scheduled for Thursday March 19, 2015 and for March 24-26, the exact days Mother is unavailable. District does not contest these facts, but states that Mother ought to have informed her new employer upon hiring, of her unavailability for these scheduled dates. However, it was not until the prehearing conference before OAH, which also occurred on March 9, 2015, that these hearing dates were finalized. Therefore, Mother was not reasonably in a position to inform her new employer about them. Good cause for the continuance has thus been established. Mother's declaration also states she must give her employer 30-day notice of absences. Good cause therefore exists to continue the matter to the requested dates of May 5-7, 2015.¹

District has not established that it would be prejudiced by a continuance of this matter. District is not currently paying the costs of Student's private placement, and its arguments of prejudice all concern the potential liability for additional months of reimbursement should it ultimately be found liable for them. These arguments are attenuated, and in addition they relate to remedies sought in the separate action brought by Student, and not to this District-filed matter in which District seeks only declaratory relief that it offered Student appropriate assessments and a free appropriate public education.

The request to compel mediation is denied. Mediation is voluntary. Student has established no authority to the contrary such that it may be compelled.

¹ Mother shall immediately notify her employer of these dates; and no further continuances will be granted based on her employment unavailability. Note that Student's requested first day of hearing was May 4, 2015, which cannot be accommodated, as OAH does not schedule hearings on the first Monday of the month.

In conclusion, OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request is:

☒ Granted. All dates are vacated. This matter will be set as follows:

Prehearing Conference:	April 27, 2015 at 10:00 AM ²
Due Process Hearing:	May 5-7, 2015 at 9:30 AM the first day, 9:00 AM all other days, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

IT IS SO ORDERED.

DATE: March 17, 2015

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings

² Student and District have each filed motion to quash subpoenas issued by the other. The continuance renders these motions moot. Any additional motions that may be filed will be ruled on prior to or at the continued PHC hereby set for April 27, 2015.